

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
ASSOCIATION OF LOCAL)	CCB/CPD 97-30
TELECOMMUNICATIONS SERVICES)	
)	
Request for Clarification of the Commission's)	
Rules Regarding Reciprocal Compensation)	
for Information Service Provider Traffic)	

RECEIVED
AUG 12 1998
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

REPLY OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), hereby submits its Reply in response to comments filed in the above-captioned proceeding.

The record established by the commentators demonstrates that the incumbent local exchange carriers' (LECs) attempts to exclude Internet service provider (ISP) traffic from the reciprocal compensation requirements are anticompetitive and unlawfully discriminatory. The incumbents cannot avoid their statutory reciprocal compensation obligations where competitive LECs are involved. In order to avoid further attempts by incumbent LECs to undermine the ability of competitive LECs to offer telecommunications services to ISPs, the Commission must clarify that incumbent LECs' reciprocal compensation obligations extend to ISP traffic exchanged with all LECs, not just other incumbents.

I. INCUMBENT LECS MUST BE REQUIRED TO COMPLY WITH THEIR RECIPROCAL COMPENSATION OBLIGATION

The Telecommunications Act of 1996 (Act),¹ imposes upon all LECs the obligation to

¹ 47 U.S.C. § 251(b)(5) (all LECs have the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications"); 47 U.S.C. § 252(d)(2)(a) (telecommunications carriers must compensate each other for costs incurred for transporting and terminating "calls that originate on the network facilities of the other carrier" on the basis of a reasonable approximation of the additional costs of terminating such calls.").

compensate each other for the transport and termination of all local traffic. Incumbent LECs lack the authority to unilaterally declare what services should be exempt from their reciprocal compensation obligations.² The Act does not carve out an exception for local calls placed to end users that are ISPs. The incumbent LECs' attempts to exempt ISP calls from the obligation to pay reciprocal compensation to competitive LECs is anticompetitive and unlawfully discriminatory.

Contrary to the incumbent LECs' claims,³ ISP traffic has always been considered local traffic for certain regulatory purposes. As CompuServe maintained, the issue is not the jurisdictional nature of the ISP traffic, but rather, how the Commission intended ISP traffic to be treated for compensation purposes.⁴ As MCI and other commentators pointed out,⁵ the Commission has traditionally treated ISP calls as local calls.⁶ Nothing has altered the Commission's classification of ISP as end users. The Commission recently reaffirmed that ISP calls should not be treated as interexchange access traffic and that ISPs should be considered end

² Comments of the United States Telephone Association and Member Companies, CCB/CPD 97-30 at 8 (filed July 17, 1997) (USTA Comments); Ameritech Comments, CCB/CPD 97-30 at 4 (filed July 17, 1997); Comments of the Southern New England Telephone Company, CPD 97-30 at 3 (filed July 17, 1997) (SNET Comments).

³ USTA Comments at 3; Ameritech Comments at 4; SNET Comments at 3.

⁴ Comments of CompuServe Incorporated, CCB/CPD 97-30 at 4 (filed July 17, 1997) (CompuServe Comments).

⁵ See, e.g., *id.*; Comments of America Online, Inc., CCB/CPD 97-30 at 7 (filed July 17, 1997); Comments of Worldcom, Inc., CCB/CPD 97-30 at 5-7 (filed July 17, 1997);

⁶ See e.g., MTS and WATS Market Structure, 97 FCC 2d 682 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631 (1988);

users for purposes of the access charge regime.⁷ The Commission's maintenance of the existing pricing structure for ISPs as end users confirms that ISP calls should continue to be treated as local calls. As AT&T has recognized, despite its view that ISP traffic is interstate in nature, by maintaining the existing pricing structure for ISPs, the Commission has effectively ruled that ISPs continue to be treated as end users purchasing local exchange service from local tariffs.⁸

There is no legal basis for treating ISP traffic differently than the traffic of any other similarly-situated end users for purposes of reciprocal compensation. Nothing in the Act addresses or exempts ISP traffic or otherwise relieves incumbent LECs from their reciprocal compensation obligation with respect to local traffic. Further, while the Court of Appeals in the Eighth Circuit recently invalidated the Commission's *pricing* rules for reciprocal compensation,⁹ the incumbent LECs are nevertheless obligated to compensate all LECs for the transport and termination of local traffic. So long as the Commission classifies ISPs as end users, ISPs should be treated like any other similarly-situated end users.

II. THE INCUMBENT LECs' REFUSAL TO COMPENSATE COMPETITIVE LECs IS ANTICOMPETITIVE AND UNLAWFULLY DISCRIMINATORY

The Act is designed to promote the competitive provision of local exchange services through sections 251 and 252. The parties agree that, absent the right to receive reciprocal compensation for the transport and termination of ISP traffic, competitive LECs could not effectively compete for ISP business due to the different expenses for the exchange of ISP traffic

⁷ Access Charge Reform, *First Report and Order*, CC Docket No. 96-262, at ¶ 344 (rel. May 16, 1997).

⁸ Comments of AT&T Corp., CCB/CPD 97-30 at 2-4 (filed July 17, 1997).

⁹ Iowa Utilities Board, et. al., v. FCC, No 96-3321 (8th Cir. filed July 18, 1997).

to their customers. Indeed, this is precisely what the incumbents are trying to achieve. This result would clearly contravene Congress' and the Commission's goals to promote competition in the local market and stimulate growth in the information service industry.

The attempts by the incumbent LECs to attack the mutual compensation scheme and evade their reciprocal compensation obligation to competitive LECs represent their steadfast opposition to the development of competition.¹⁰ As some commentators noted, the incumbent LECs did not have a problem labeling ISP traffic as local when it was exchanged among themselves, or otherwise to their benefit. Bell Atlantic, for example, apparently argued that ISP traffic is local in nature¹¹ for purposes of satisfying section 271 requirements.¹² Similarly, U S West apparently argued that ISP traffic is calculated as intrastate for separations purposes.¹³

Because the incumbent LECs are losing ISP customers to competitive LECs, the incumbents are trying to undermine the ability of competitive LECs to offer competitive rates to

¹⁰ SNET Comments at 2-3; Ameritech Comments at 9-10.

¹¹ See e.g., AOL Comments at 9, *citing* Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, CCB Pol. 96-09 Bell Atlantic Reply Comments at 4-5 (filed Apr. 29, 1996); Worldcom Comments at 10, *citing* Offer of Comparably Efficient Interconnection to Providers of Enhanced Internet Access Services, Amendment to Bell Atlantic Plan to Expand Service Following Merger with NYNEX, CCB Pol. 96-09 at 3 (filed May 5, 1997); Comments of Dobson Communications Corp., CCB/CPD 97-30 at 6 (filed July 17, 1997).

¹² 47 U.S.C. § 271.

¹³ AT&T Comments at n. 6, *citing* Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket Nos. 96-262, 94-1, 91-213 and 96-263 at 22 (filed March 24, 1997).

ISPs.¹⁴ Competitive LECs are just now beginning to benefit from the procompetitive mechanisms set forth in sections 251 and 252 of the Act. Indeed, as ISPs America Online and CompuServe commented, they are able to utilize the services of numerous competitive LECs for the carriage of ISP traffic.¹⁵ Consistent with the goals of the Act, competitive LECs offer ISPs “opportunities for AOL and others to obtain terms and conditions from CLECs that are more advantageous than those previously available from monopoly local exchange providers in some markets.”¹⁶ If incumbent LECs deny compensation for ISP-bound traffic, however, competitive LECs will be seriously hindered in their efforts to compete against the incumbents for ISPs as customers.

As AT&T accurately surmised, the anticompetitive implications of the incumbents’ refusal to compensate competitive LECs is clear.¹⁷ Several parties agree that if competitive LECs are denied reciprocal compensation when ISPs are their customers, this would increase their costs, render their services less economically desirable, and therefore deprive ISPs of a competitive alternative to the incumbent.¹⁸ Further, as America Online expressed, if local competition is undermined, the incumbent LECs would be able to exploit the ISPs’ reliance on

¹⁴ Indeed, SNET complained that ISP traffic is “terminating only” traffic that only flows in only direction. If ISPs originate fewer calls, it is irrelevant to the incumbents’ obligation to compensate competitive LECs. SNET Comments at 3.

¹⁵ AOL Comments at 14; CompuServe Comments at 2-3.

¹⁶ AOL Comments at 15.

¹⁷ AT&T Comments at 4-5;

¹⁸ See e.g., *id.*; America Online Comments at 4; Comments of Vanguard Cellular Systems, Inc., CPD 97-30 at 7 (filed July 17, 1997); Comments of the Commercial Internet eXchange Association, CCB/CPD 97-30 at 2 (filed July 17, 1997).

their end-to-end networks, including engaging in unfair and improper marketing practices, discriminatory interconnection arrangements, and/or impermissible cross-subsidization.¹⁹ As MCI maintained in its Comments, if only the incumbents are able to offer ISPs local rates, ISPs would be totally dependent upon the incumbents' network for local service.

Moreover, to the extent that incumbent LECs discriminate against competitive LECs in the payment of reciprocal compensation for ISP traffic, such practice is unlawfully discriminatory. The incumbents do not deny the argument raised by ALTS concerning discriminatory practices by incumbent LECs. As the parties agreed, permitting incumbents to refuse to compensate competing carriers would clearly discriminate against those competitors to the benefit of the incumbent's own ISP traffic. Indeed, AT&T pointed out that no incumbent LEC has refused to provide ISPs with its own state-tariffed business lines or private lines on the ground that the ISPs are not local service customers.²⁰ As MCI argued in its Comments, the incumbent LECs should not be permitted to unilaterally declare that ISP traffic is interstate and refuse to compensate competitive LECs.²¹ The Commission should clarify that the incumbent LECs' reciprocal compensation obligation is not limited to ISP traffic exchanged between themselves.

¹⁹ AOL Comments at 15-16.

²⁰ AT&T Comments at 4.

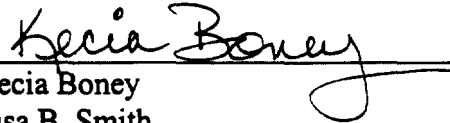
²¹ MCI Comments at 5.

III. CONCLUSION

For the foregoing reasons, MCI respectfully requests that the Commission clarify that the incumbent LECs must comply with their statutory reciprocal compensation obligations to all LECs for ISP traffic.

Respectfully submitted,

**MCI TELECOMMUNICATIONS
CORPORATION**

A handwritten signature in cursive script, reading "Kecia Boney", is written over a horizontal line.

Kecia Boney
Lisa B. Smith
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-3040

Its Attorneys

Dated: July 31, 1997